



[Billing Code 6355-01-P]

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1460

[Docket No. CPSC-2015-0006]

Children's Gasoline Burn Prevention Act Regulation

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: The Children's Gasoline Burn Prevention Act (CGBPA or the Act) adopted the child-resistance requirements for closures on portable gasoline containers—found in the 2005 version of the applicable ASTM rule, F2517-05—as a consumer product safety rule. The 2005 ASTM standard was recently revised. Under the Act, the consumer product standard for portable gasoline containers will, by operation of law, incorporate the 2015 revisions to the child-resistance requirements unless the Commission finds that the revisions do not carry out the purposes of the CGBPA's requirements. The Commission has not found that the revisions fail to carry out the purposes of the CGBPA's requirements. As a result, the 2015 revisions to the child-resistance requirements will be automatically incorporated and apply as the statutorily-mandated standard for closures on portable gasoline containers. This direct final rule is to codify certain sections of the 2015 standard to eliminate potential confusion as to the applicable standard.

DATES: This rule will be effective on April 12, 2015, unless the Commission receives significant adverse comment by April 3, 2015. If we receive timely significant adverse

comments, we will publish notification in the **Federal Register** withdrawing this direct final rule. The incorporation by reference of the publications listed in this rule is approved by the Director of the Federal Register as of April 12, 2015.

ADDRESSES: You may submit comments, identified by Docket No. CPSC-2015-0006, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: <http://www.regulations.gov>. Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (e-mail), except through www.regulations.gov. The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written comments (paper, disk, or CD-ROM submissions) by mail/hand delivery/courier to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to <http://www.regulations.gov>. Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

FOR FURTHER INFORMATION CONTACT: John Boja, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814-4408; telephone (301) 504-7300; jboja@cpsc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Children’s Gasoline Burn Prevention Act. The Children’s Gasoline Burn Prevention Act was enacted on July 17, 2008. The Act establishes as a consumer product safety rule ASTM International’s (ASTM) F2517-05’s child-resistance requirements for closures on portable gasoline containers. All portable gasoline containers manufactured on or after January 17, 2009 for sale to consumers in the United States must conform to the 2005 ASTM standard’s child-resistance requirements. By mandating closures that resist access by children under age 5, the Act seeks to reduce hazards to children, including children ingesting gasoline and inhaling gasoline fumes, and the risk of burns from fires and explosions that may occur when children access gasoline stored in portable gasoline containers. The Act did not require the Commission to take any action for the Act’s provisions to take effect; rather, ASTM 2715-05’s child-resistance requirements were made mandatory through operation of law, as discussed below.

ASTM F2517-05. Under ASTM F2517-05, *Standard Specification for Determination of Child Resistance of Portable Fuel Containers for Consumer Use*, closures on affected containers must prove adequately resistant to children as old as 4 years and 3 months.

CGBPA Provisions Regarding Updates to ASTM F2517-05. Under the Act, ASTM must notify the Commission of any revision to the child-resistance requirements

for closures contained in ASTM F2517-05. Once ASTM notifies the CPSC of ASTM's revisions to the standard, the revisions will be incorporated by operation of law and will become the consumer product safety standard within 60 days after such notice unless the Commission determines that the revision does not carry out the purposes of the child-resistant requirements for closures on portable gasoline containers specified in ASTM F2517-05 and so notifies ASTM.

Under the Act, the ASTM standard for portable gasoline containers became, by operation of law, the applicable consumer product safety standard. Similarly, any revision to the child-resistance requirements of the ASTM standard becomes, by operation of law, part of the applicable consumer product safety standard unless the Commission determines, within 60 days after receiving notice from ASTM of a revised ASTM standard, that the revisions are not acceptable as provided in the Act.

On February 11, 2015, ASTM gave to CPSC notice of revisions to ASTM F2517-05. The revised standard is designated F2517-15.

The Commission has not made a determination that the revisions to ASTM F2517-05's child-resistance requirements for closures on portable gasoline containers fail to further the purposes of the CGBPA's requirements.

II. Description of the Rule

The rule codifies the child-resistance requirements for closures on portable gasoline containers as stated in ASTM F2517-15. As stated above, these requirements become mandatory through operation of law; the Commission is publishing this rule so that the Code of Federal Regulations will reflect the current version of the mandatory standard.

III. Direct Final Rule

The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA) generally requires notice and comment rulemaking, section 553 of the APA provides an exception when the agency, for good cause, finds that notice and public procedure are “impracticable, unnecessary, or contrary to the public interest.” The Administrative Conference of the United States (ACUS) endorsed direct final rulemaking as an appropriate procedure to expedite promulgation of rules that are noncontroversial and that are not expected to generate significant adverse comment. *See* ACUS, Recommendation, 95-4, 60 FR 43108, 43110 (August 18, 1995).

This rule will codify in the Code of Federal Regulations the child-resistance requirements of a consumer product safety standard, ASTM F2517-15, that already are in full force and effect by operation of law. Codification of the rule into CPSC’s regulations is intended to eliminate potential confusion as to the child-resistance standard applicable to portable gasoline containers. In these circumstances where the substantive requirements are mandated by statute and have become effective under the statute, public comment serves little purpose. Moreover, codification of existing substantive requirements is not expected to be controversial or to result in significant adverse comment. As a result, the Commission believes that issuance of a rule codifying the revised standard in these circumstances is appropriate.

Unless we receive a significant adverse comment by April 3, 2015, the rule will become effective on April 12, 2015. In accordance with ACUS’s recommendation, the Commission considers a significant adverse comment to be one in which the commenter explains why the rule would be inappropriate, including an assertion challenging the

rule's underlying premise or approach, or a claim that the rule would be ineffective or unacceptable without change. Should the Commission receive a significant adverse comment, the Commission would withdraw this direct final rule. Depending on the comments and other circumstances, the Commission may then incorporate the adverse comment into a subsequent direct final rule or publish a notice of proposed rulemaking providing an opportunity for public comment.

IV. Incorporation by Reference

Section 1460.3 of the final rule provides that closures on portable gasoline containers must comply with the child-resistance requirements of ASTM F2517-15. The Office of the Federal Register (OFR) has regulations concerning incorporation by reference. 1 CFR part 51. The OFR recently revised these regulations to require that, for a final rule, agencies must discuss in the rule's preamble ways that the materials the agency incorporates by reference are reasonably available to interested persons and how interested parties can obtain the materials. In addition, the preamble of the rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR's requirements, the discussion in this section summarizes the provisions of ASTM F2517-15. Interested persons may purchase a copy of ASTM F2517-15 from ASTM, either through ASTM's website or by mail at the address provided in the rule. One may also inspect a copy of the standard at the CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, or at the National Archives and Records Administration (NARA), as discussed in the rule.

The CPSC is incorporating by reference child-resistance requirements of ASTM F2517-15 pursuant to the Act because the Commission has determined that the revised

standard carries out the purposes of the child-resistant requirements for closures on portable gasoline containers specified in ASTM F2517-05.

The revised standard, ASTM F2517-15, contains:

- Testing procedures for assessing child-resistance and senior adult-use effectiveness for closures on portable gasoline containers
- A minimum required effectiveness rate of child-resistance and senior adult-use for closures on portable gasoline containers to establish compliance with the standard
- A requirement that child-resistant containers and closures first meet the feasible and appropriate spill resistance requirements in CARB CP-501, TP-501, TP-502, and EPA Regulation 40 CFR 59.623.

Because the scope of the consumer product safety rule is established by the CGBPA, this rule does not incorporate by reference the scope section of ASTM F2517-15 or Appendix X1 that relates to the scope section of ASTM F2517-15.

V. Effective Date

As discussed in the preceding section, this is a direct final rule. Unless the Commission receives a significant adverse comment by April 3, 2015, the rule will become effective on April 12, 2015.

VI. Other Relevant Statutory Provisions

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statutes unless the

agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603 and 605. This rule merely codifies requirements that will take effect through operation of law as specified in the CGBPA. The rule does not impose any requirements beyond those put in place by the CGBPA. Thus, the rule does not create new substantive obligations for any entity, including any small entity. Accordingly, the Commission certifies that the rule will not have a significant impact on a substantial number of small entities.

B. Environmental Considerations

The Commission's regulations provide a categorical exclusion for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement because they "have little or no potential for affecting the human environment." 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

C. Paperwork Reduction Act

This direct final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) is not required.

VII. Preemption

Section 26(a) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2075(a), provides that where a "consumer product safety standard under [the CPSA]" is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state

requirement is identical to the federal standard. (Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances).

As discussed above, under the CGBPA, the child-resistance requirements of ASTM F2517-15 became a consumer product standard for CPSA purposes. Children's Gasoline Burn Prevention Act, Pub. L 110-278, Sec. 2(a) (July 17, 2008). The child-resistance requirements of ASTM F2517-15, which will be codified under this rule, will invoke the preemptive effect of section 26(a) of the CPSA.

VIII. Certification

Section 14(a) of the CPSA requires that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, be certified as complying with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program. Because ASTM F2517-15 is deemed a "consumer product safety rule" for CPSA purpose, portable gasoline containers manufactured on or after April 12, 2015 are subject to the testing and certification requirements of section 14 of the CPSA with respect to ASTM F2517-15.

List of Subjects in 16 CFR Part 1460

Consumer protection, Gasoline, Incorporation by reference, Safety.

For the reasons stated above, the Commission adds part 1460 to subchapter B of title 16 of the Code of Federal Regulations to read as follows:

PART 1460 – Children’s Gasoline Burn Prevention Act Regulation

Sec.

1460.1 Scope and application.

1460.2 Definition.

1460.3 Requirements for child-resistance for closures on portable gasoline containers.

Authority: Sec. 2, Pub. L. 110-278, 122 Stat. 2602.

§ 1460.1 Scope and application.

In accordance with the Children’s Gasoline Burn Prevention Act, portable gasoline containers must comply with the requirements specified in § 1460.3, which are considered to be a consumer product safety rule.

§ 1460.2 Definition.

Portable gasoline container means any portable gasoline container intended for use by consumers.

§ 1460.3 Requirements for child-resistance for closures on portable gasoline containers.

Each portable gasoline container manufactured on or after April 12, 2015 for sale in the United States shall conform to the child-resistance requirements for closures on portable gasoline containers specified in sections 2 through 6 of ASTM F2517-15 (including Appendixes X2 and X3 referenced therein), *Standard Specification for Determination of Child Resistance of Portable Fuel Containers for Consumer Use*, approved on January 1, 2015. The Director of the Federal Register approves the incorporation by reference listed in this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of these ASTM standards from ASTM

International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959 USA, telephone: 610-832-9585; <http://www.astm.org/>. You may inspect copies at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301-504-7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to:

http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Alberta E. Mills,
Acting Secretary,
U.S. Consumer Product Safety Commission.

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